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form a written instrument where there has been an innocent omission or insertion of a material stipulation, contrary to the intention of both parties, and under a mutual mistake, and where there has been a mistake of one party, accompanied by fraud or other inequitable conduct of the remaining parties.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 80; Dec. Dig. § 20.* 9 Va.-W. Va. Enc. Dig. 866; 11 id. 905.]

3. Reformation of Instruments (§ 45*)—Mistake or Fraud—Evidence.—In a suit to compel performance of a contract to convey real estate, which defendant executed to her husband's creditor in payment of a debt, evidence held insufficient to establish that she was induced to execute the instrument by fraud or mistake as to her liability on the notes executed by her husband to secure the debt.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 159; Dec. Dig. § 45.* 11 Va.-W. Va. 905; 14 id. 727-129; id. 901.]

Appeal from Corporation Court of City of Roanoke.

Bill by J. H. Wilkinson against E. E. Dorsey for specific performance. Decree for defendant, and complainant appeals. Reversed.

C. B. & H. M. Moomaw and Hall, Woods & Jackson, for the appellant.

Scott, Altizer and Watts, for the appellee.

MARTIN *v.* MARTIN.

Nov. 16, 1911.

[72 S. E. 680.]

1. Partition (§ 4*)—Nature of "Partition."—"Partition" is the division between two or more persons of lands which they jointly own as coparceners, joint tenants, or tenants in common, and before land purchased by one of them can be brought into a partition suit along with lands jointly owned, pursuant to a verbal agreement, a state of facts must be established which will authorize a specific performance of the verbal agreement.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 6-12; Dec. Dig. § 4.* 10 Va.-W. Va. Enc. Dig. 769.

For other definitions, see Words and Phrases, vol. 6, pp. 5188-5190.]

2. Frauds, Statute of (§ 129*)—Verbal Agreement for Partition—Enforcement—Conditions—Precedent—Under the statute of frauds (Code 1904, § 2840), a verbal agreement for partition is not enforceable, unless the agreement is certain and definite, and the acts

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

of part performance refer to and result from the agreement, and the agreement must have been so far executed that a refusal of full execution will operate as a fraud on the party seeking enforcement.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 287-292; Dec. Dig. § 129.* 6 Va.-W. Va. Enc. Dig. 531, id. 539; 8 id. 386; 12 id. 537, 545, 678.]

3. Frauds, Statute of (§ 129*)—Verbal Agreement for Partition of Real Estate—Part Performance.—Plaintiff and defendant purchased the interests of their brothers and sisters in land of their deceased father, pursuant to an oral agreement that adjacent land, previously purchased by defendant alone, should be considered a part of the father's land for partition between plaintiff and defendant. Plaintiff furnished his share of the money for the purchase of the interests, the cultivation of the land, and the raising of crops, the proceeds of which went to the support of plaintiff and defendant, the surplus being used to pay for the interests purchased, and the interests so purchased were paid wholly out of the crops raised by the joint labor of plaintiff and defendant. Held, that the acts of performance by plaintiff did not take the agreement out of the statute of frauds (Code 1904, § 2840), and it was not enforceable.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 287-292; Dec. Dig. § 129.* 12 Va.-W. Va. 537.]

4. Specific Performance (§ 64*)—Verbal Agreement for Partition—Enforcement.—The evidence did not show a state of facts justifying enforcement of the agreement, within the rule that, to justify the enforcement of a parol contract for partition, the contract must have been so far executed that a refusal of full execution will operate as fraud on the party seeking enforcement.

[Ed. Note.—For other cases, see *Specific Performance*, Dec. Dig. § 64.*]

Appeal from Circuit Court; Roanoke County.

Suit by Lewis J. Martin against Thomas H. Martin. From a decree for plaintiff, defendant appeals. Reversed and remanded.

A. E. King, for appellant.

Horace M. Fox & Hall, Woods & Jackson, for the appellee.

CAMPBELL v. DOTSON.

Nov. 16, 1911.

[72 S. E. 688.]

Partition (§ 8*)—By Act of Parties—Deed—Validity.—A partition deed is not invalidated as to the parties signing it because it was not signed by all the parties to it, where all the shares were verbally agreed upon, and the allottees entered upon their respective al-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.